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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

Third and fourth periodic reports of States parties

Kenya*

* The present document is being issued without formal editing.
For the initial and second reports submitted by the Government of Kenya, see CEDAW/C/KEN/1-2, considered by the Committee at its twelfth session.

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INTRODUCTION

1. The Government of Kenya has remained committed to the advancement of women, as is reflected in progressive inclusion of women's agenda in the national development plans and projects. The key national documents, both sectoral and multi-sectoral, categorically outlines the government development approach from a gender perspective. The Social Dimensions for Development Programme, the Poverty Eradication Plan (1999 - 2015), the Kenya Demographic Health Survey and the Kenya Economic Surveys are examples of such documents, among others.

   The ratification of International Conventions that seek to promote women's welfare like the CEDAW and the Beijing Declaration and Platform for Action, among others, further shows Kenya's commitment in this process. The convention serves to spotlight Kenya's record in this field and to open it to international scrutiny. This report therefore seeks to review the measures which have been implemented in furtherance of the state's obligations under the convention.

2. In the common law doctrine, which is operational in Kenya, International law does not affect the municipal law of the country unless parliament has specifically enacted or in some other legislative way incorporated it as the law of Kenya. Under this general doctrine, the convention must be given effect through legislative, judicial and administrative measure; however the procedure of domestication is long and has thus contributed to the delays in implementing the convention. It is to be noted that there has been some deliberate interventions made by the Government with a view to comply with the provisions of the convention. These interventions are as follows:

(a) In 1998 the government tabled the Draft National Policy on Gender and Development. The national policy provides a basis for the government to address the existing gender concerns in the nation's socio-economic cultural and political way of life. This forms a tangible framework of implementing International instruments such as CEDAW.

(b) The government of Kenya,having ratified the CEDAW convention in 1984, set up a Task Force to review all laws relating to women and children. The mandate of the Task Force is to:

- Review all existing laws, regulations, practices, customs and policies which have the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights in the civil, political economic, social, cultural or any other fields;
- To make recommendations to modify, amend or abolish existing laws, regulation practices, customs and policies that constitute discrimination against women;
- To consider or recommend a comprehensive bill which will render unlawful any discrimination on the basis of sex and promote equality of opportunity between all persons

(c) The Government in 1998 initiated a constitutional Review Process, which encompassed a general legislative Review

(d) A further initiative made by Government has been the establishment of the Women's Bureau in 1976 as the National Women's Machinery for the advancement of women in Kenya. This was a clear government determination to improve the status of women. The Cabinet Memorandum (78b) mandated the Bureau to undertake the following activities:

- Policy formulation, implementation and evaluations;
- Co-ordination of all government initiatives and programs for women;
- Collection and analysis of data and information required for the design, monitoring and evaluation of policies and projects for women
- Support to and liaison with NGO projects and women's organizations.

In order to fulfil its overall goal of improving the status of women, the government has adopted various development approach and/or strategies with the aim of incorporating women's concerns into the main stream development. For example,Women in Development (WID) was adopted in the 1970 s as a concrete policy for integrating women in the development process. The strategy was to target women with small welfare or income-generating projects. These strategies proved to be ineffective instruments in addressing women's strategic needs because of their women-only focus, which perpetuated marginalisation of women issues from the mainstream development process. More recently there has been a re-orientation from project focus to a more sectoral and policy orientation, based on Gender and Development (GAD). Gender strategies focus more on sectoral approaches that enhance the participation of women and men in the mainstream development as equal partners do.

(e) In an attempt to strength the existing national machinery for the advancement of women, the government proposes to establish a National Council for Gender and Development. It is the Government's view that upgrading the status of the National Women's Machinery will improve its efficiency for effective integration of gender dimensions in future policy formulation, planning and implementation. It is also expected to provide a suitable base for gender mainstreaming through the national sectoral approach and the implementation of the international conventions.

Taken together, the setting up of a Task Force to review all the laws relating to women and children, the ongoing Constitutional Review Process, the proposal to establish the National Gender Policy and the proposed National Council for Gender and Development are far reaching legislative, political and administrative developments which augur well for the establishment of institutionalized mechanisms for on-going and dynamic implementation of the measures provided for in the convention.

ARTICLE 1 AND ARTICLE 2

(i) The legal definition of discrimination in the Laws of Kenya does not cover all aspects envisaged by the convention.

(ii) The definition of discrimination was amended in November 1997 to include discrimination on the basis of sex, under section 82 (3) of the Kenya Constitution, discrimination is defined as follows:-

> "In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origins, or residence or other local connections, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description".

(iii) It is significant to note that sections 82 (4) (b & c) the constitution reserves the right to discriminate in matters of adoption, marriage, divorce, burial, devolution of property of death, customary and personal law, areas of law that more affect women. However, this must be seen in context since Kenyan society is composed of various ethnic groups with different customs and practices.

(iv) The enactment and coming into operation of the Law of Succession Act in July 1981 has been a major step towards equality as is envisaged by the convention. It provides a uniform code as far as devolution of property on death is concerned and gives both men and women equal rights to inherit, own and dispose of property.

(v) Such policies or practices that discriminated against women as no house allowance for married women, women employment in contract terms, women deterred from working in certain sectors and timing and no tax relief for married women have so far been amended. Women now enjoy same rights as men in such areas. A number of institutions as the Women's Bureau, Inter-Parliamentary Party Group (IPPG), Task Force Legal Sector Reform Committee and Law Reform Commission, as discussed later, have been deliberately formed. They form a strong force in reacting to discriminatory laws, policies and practices violating women's human rights.

(vi) In practice, the Government has resolutely adhered to the principle of equality of men and women. To this end the government has hired an increasing number of women to senior public service positions and as heads of government corporations, as shown in Table 5 in Article 8.

However customary practices, lack of awareness on legal rights, lack of capacity-building opportunities, stereotyped roles and poverty still pause a major deterrence on women in attaining their full development and fundamental rights.

ARTICLE 3

1. Women in Kenya have equal access as men in law to the political process, social services, health and medical care, education, literacy development programmes, employment, ownership of property and social welfare.

2. There are various policy measures that have been taken to ensure the full participation of women in social, economic and cultural fields.

   (i) In 1975, the Kenya Government, in recognition of the contribution of women in the development process,established the Women's Bureau as a division in the Department of Social Services in the Ministry of Culture and Social Services,as it then was, with the main objective being to improve the status of women.

   (ii) The Bureau was mandated to undertake the following functions:-

   - Policy formulation, Implementation and Evaluation,
   - Co-ordination of all Government initiatives and programs for women,
   - Collection and analysis of data and information required for the design, monitoring and evaluation of policies and projects for women,
   - Support to and liaison with NGO projects and women's organizations

   (iii) Thus the role of the Bureau is that of a co-ordinator of all women's programs in the country which seek to uplift the status of women and increase their participation in the national development process

   (iv) The constitution provides for the complete equality in the protection of human rights and fundamental freedoms in its Bill of Rights.

(v) The government has taken further policy measures to ensure the full development and advancement of women, thus the draft National Policy on Gender and Development was tabled in 1998 to the stakeholders.

(vi) The draft policy stipulates the gender issues and concerns which currently affect the lives of women and men and proposes strategies and actions needed to be taken to address these issues and concerns. It also specified the monitoring and evaluation systems required to ascertain the performance of the various policies. The policy also underlines the need for the establishment of a strong National Women's Machinery to facilitate effective implementation of the policy. This gender policy focuses on the removal of existing gender disparities and on strategies that offer pragmatic understanding of essential linkages between the reproductive and productive roles of women and men. It highlights the social, cultural, economic and political factors that perpetuate inequality as far as access to and control of development resources are concerned.

3. Currently, plans are underway to review the national constitution. A commission has however been set up by Act of Parliament to facilitate this process. The commission comprising of both women and men are mandated to perform the following functions:-

- To conduct and facilitate civic education in order to stimulate public discussions and awareness on constitutional issues;

- To collect and collate the views of the people of Kenya on proposals to alter the constitution and on the basis thereof, to draft a bill to alter the constitution for presentation to the National Assembly;

- To carry out or cause to be carried out such studies, researches and evaluations concerning the constitution and other constitutions and constitutional systems as,in the commission opinion, may inform the commission and the people of Kenya on the state of the Constitution of Kenya;

- The Commission is mandated to,*inter alia:*

  (i) Examine and recommend improvements to the existing constitutional commission, institutions and offices as well as the establishment of additional ones to facilitate constitutional governance and the respect for human rights and gender equity in Kenya as an indispensable and integral part of the enabling environment for economic, social, religious, political and cultural development;

  (ii) Examine and recommend improvement to the electorate system in Kenya;

  (iii) Examine and review the place of property and land rights in the constitutional framework and recommend improvement that will secure the fullest enjoyment of land and other property rights;

  (iv) Examine and review the right to citizenship and recommend improvements that will, in particular ensure gender parity in the conferment of the right;

  (v) Examine and review the socio-cultural obstacles that promote various forms of discrimination and recommend improvements to secure equal rights for all;

  (vi) Examine and recommend on treaty making and treaty implementation powers of the Republic and any other relevant matter to strengthen good governance and the observance of Kenya's obligations under international law.

In order to facilitate the function of the commission as stated above, District Forums were established. The main function of this District Forums is to mobilize communities at the local level for the purposes of civic education in preparation for the commission's work.

- Women are well represented in both the Commission and the District Forum levels
- Thus out of twenty-five commissioners, atleast eight must be women and if the Chairperson is a man, the Vice-Chairperson must be a women and vice versa.

At the District Forum Level, women form a third (1/3) of the representation.

- The functions of the National Forum are to study the report of the commission together with the draft bill to alter the constitution and to debate, amend and adopt the proposals contained therein after which it shall submit the report and Draft Bill back to the Commission who shall present the same to the Attorney General for introduction to the National Assembly.
- The third organization through which the constitution is being reviewed is the National Constitutional Consultative Forum.
- The composition of the National Constitutional Consultative Forum includes women's organizations.

In the light of the above,the government has attempted through the constitutional review process to set in motion a legislative action that will ensure the provision of basic needs of all Kenyans, men and women, through the establishment of an equitable framework for economic growth and equitable access to national resources. The Government has also endeavoured to involve women in all states of the Review process. The Constitutional Review Process is expected to address all the areas covered under the law.

ARTICLE 4

(i) There has been affirmative action taken by the government to accelerate the defacto equality.

(ii) This has been mainly in the education sector. In the past two years, the Government took note of the low enrolment levels of girls in the public universities compared to boys and in recognizing that the promotion of women's education is vital to the social and economic status of women and the nation at large, affirmative action was introduced by way of lowering the entry points for female students by one point. The draft Gender and Development Policy Paper also forms a policy framework in which specific measures for women's advancement are outlined. In other sectors, there has not been any formal affirmative action policy or legislation at all or in existence by practice.

ARTICLE 5

(i) Practices like forced marriages, early marriages, wife inheritances, polygamy, FGM, payment of dowry, cultural traditions relating to burial, preference for boys among others have for long hampered women's advancement. However great effort has gone into overhauling the educational system with the view to ensuring equality by modifying the social and cultural patterns of conduct of men and women. Of great significance is the new syllabus of 8-4-4- of education implemented in 1987, which has substantially done away with the stereotyped roles for men and women.

Other efforts towards curbing these practices include a presidential directive against FGM, Stern legal actions against forced marriages, appointment of women in district and divisional administration and progress on media coverage against stereotyping and advocating against such practices.

(ii) The Government, NGO, Religious Organization and civil society has been involved in programmes targeted to remove stereotyping on women and men. This is reflected in the revision of school books and curriculum, Women's Bureau sensitization programs in different sectors, including media, police training by FIDA in collaboration with the Attorney General chambers and other civic education programmes by NGOs, religious and civic organization. However, such efforts meet hindrances impacted by traditional practices, lack of men's involvement, illiteracy and poverty.

ARTICLE 6

(i) Prostitution is illegal in this country though it exists in urban areas due to the fast urban development and high unemployment rates. This is also due to the fact that even when it is enforced it's enforced more against women.

(ii) The section 147 of the penal code deal extensively with procreation, whereas section 153 and 154 deal extensively with the offence of prostitution. The law relating to violence is applicable to every one including the prostitutes.

(iii) The two sections also make it an offence for any person who abets or compels prostitution.

(iv) Thus the sanctions that are imposed on the prostitutes can and have been imposed on the clients of the prostitution.

(v) The laws concerning child prostitution are also found in the penal code section 147 and 148 of the penal code deal mainly with the offence of procreation. Thus its an offence for a person to:

- Procure or attempt to procure any girl or women under the age of twenty one years to have unlawful carnal connection, either in Kenya or else where, with any other person or persons;
- Procure or attempt to procure any women or girls to become, either in Kenya or elsewhere, a common prostitute;
- Procure or attempt to procure any women or girl to leave Kenya, with intent that she may become an inmate of or frequent a brothel elsewhere;
- Procure or attempt to procure any women or girl to leave her usual place of abode in Kenya, with intent that she may for the purposes of prostitution become an imante of or frequent a brothel either in Kenya or elsewhere.
- Section 148 deals with the offence of procreation of any women or girl by treats or fraud or administering drugs.
- Section 149 and 150 of the penal code make it an offence for a householder or manager to permit the defilement of a girl under the age of thirteen and sixteen respectively.

(vi) The law relating to violence against women in Kenya is covered under the part of the penal code that deals with offence against the person. This law is applicable to all persons in Kenya including prostitutes.

(vii) The law relating to rape in Kenya is also covered under the part of the penal code that deals with offences against morality. This law protects all women, including prostitutes.

(viii) The selling of women's sexual services by a third party is illegal in Kenya. This office is provided for under section 147 which is already covered, section 153(2) and section 154 which make it an offence for a male and female person respectively to exercise control, direction or influence over the movements of prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally.

(ix) Further, section 156 of the penal code makes it an offence for a person to:

- Keep, manage or assist in the management of a brothel
- Lease or let any part of the premises with the knowledge that the premises or some part thereof is used as a brothel.

(x) Section 151 of the penal code also makes the detention of women or a girl with the intent that she may be unlawfully and carnally known by any man, whether by any particular man or generally or in a brothel, an offence.

(xi) Despite the law and sanctions on the offence of prostitution being in place, prostitutions still continues to thrive in the urban areas. The reason for this could be that the punishments proscribed do not really match the crime and hence may not serve as deterrents. All these offences related to traffic in women and prostitutions are classified only as misdemeanours carrying a maximum sentence of three years.

ARTICLE 7

(i) The constitution guarantees the right of every adult Kenyan, male or female to vote and to be eligible for election to all publicly elected bodies, subject to the qualifications for each post, applicable to one and all. No literacy or property requirement is need for one to participate in voting.

(ii) Women are actively involved in all political parties in Kenya.

(iii) With the advent of multiparty system in Kenya, more women are seeking elective offices. Thus during the 1997 General Elections fifty (50)) women vied for parliamentary positions on both the ruling party (KANU) ticket as well as the opposition tickets (Table 2 below); whereas two (2) women vied for the presidential seat.

(iv) Participation in voting shows that 51.1% of voters were women as shown by Table A in the Annex. However the statistics still show a poor women representation in different sectors.

Table 1

Number of Candidates by Gender, 1969 - 1997

YEAR OF ELECTION	NUMBER OF CANDIDATES			
	WOMEN	MEN	TOTAL	% WOMEN
1969	4	602	606	0.66
1974	11	728	739	1.49
1979	10	734	744	1.34
1983	7	720	727	0.96
1988	12	840	852	1.41
1992	19	835	854	2.23
1997	50	832	882	5.70

Source: Electoral Commission, January 1998

The Table below shows that despite women's major participation as voters,their number in parliament has continued to remain much less than that of men. Men are the majority members of parliament.

Table 2

Members of National Assembly Distribution by Sex, 1969 - 1998

YEAR	WOMEN	MEN	TOTAL	% WOMEN
1969	2	165	167	1.2
1974	7	162	169	4.1
1979	4	166	170	2.4
1983	3	167	170	1.8
1988	3	197	200	1.5
1992	7	193	200	3.5
1997	8	214	222	3.6
1998	9	213	222	4.1

Source: Electoral Commission, 1998

Women in Local Councils

Women have not faired well in local authority elections since independence. Table 3 below shows that very few women have continued to be elected as councillors. This contributes to limited participation of women in politics and decision-making at the local levels. However, there has been a significant change affected with the advent of multi-party elections in Kenya since 1992 where women's representation has increased from 2.7% in 1992 to 8.1% in 1998.

Table 3

Local Authorities Membership by Sex and Type of Authority

AUTHORITIES	1988			1992			FEBRUARY 1998		
	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN
Country Council	631	13	2.1	1,029	24	2.3	2,455	201	8
Municipal Council	215	7	3.3	354	15	4.2	596	52	8
City Council	-	-	-	55	4	7.3	69	7	10
Town Council	125	3	2.4	398	7	1.8	572	40	7
Total	**971**	**23**	**2.4**	**1,836**	**50**	**2.7**	**3,692**	**300**	**8**

Source: **Electoral Commission, 1998**

Kenya Gazette, Nairobi,16th January 1998

Table 4 below shows the gender composition of the Kenya Judiciary service establishment. As can be observed, there has been less women than men in the service. However, the situation has continued to improve with female composition increasing from 25.9% in 1994 to 30.6% in 1998.

Table 4

Judicial Service Establishment in Kenya by Grade and Sex

RANK	1994			1996			OCTOBER 1998		
	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN
Chief Justice	1	0	0.0	1	0	0.0	1	0	0
Judges of Appeal	8	0	0.0	10	0	0.0	10	1	10
High Court Judges	30	4	13.3	30	4	13.3	29	5	17
Commissioners of Oath	-	-	-	-	-	-	10	4	40
Chief Magistrates	8	3	37.5	9	4	44.4	10	4	40
Senior Principal Magistrates	7	2	28.5	8	3	37.5	10	3	30
Senior Resident Magistrate	41	13	31.7	40	13	32.5	39	14	35
Resident Magistrate	94	23	24.5	96	24	25.0	86	28	32
District Magistrate	119	37	31.1	116	39	33.6	112	40	35

Chief Kadhil Kadhis	9	0	0.0	14	0	0.0	17	0	0
Total	**317**	**82**	**25.9**	**324**	**87**	**26.9**	**324**	**99**	**30**

Source: Judicial Commission

ARTICLE 8

(i) Since 1989, an increasing number of women have joined the Ministry of Foreign Affairs and the Government,in recognition of their role,has appointed quite a number to the diplomatic service. At the present there are 2 women ambassadors.

(ii) Kenya delegations to international forums in which Kenya is actively involved such as the Organization of African Unity (OAU), the Commonwealth, the United Nations, IGAD, COMESA and East Africa Cooperation (EAC) among others usually include women.

(iii) Between 1991 to date, the Permanent Secretary in the Ministry of Foreign Affairs has been a woman except for a few months break in 1998 when the Permanent Secretary was a man. The post of Permanent Secretary in Kenya is the highest post in the Civil Service Structure.

(iv) As shown in Table 5 below, the total number of ambassadors appointed to serve in Kenya's missions abroad was thirty-two (32) in 1992; out of these 3.1% were women. However, the percentage of women representation has increased to 6.1% by October 1998.

(v) The total number of representatives of the Kenya Government to Foreign governments or international organization is three hundred and fifty one (351). Out of this number of staff, ninety-two (92) are women. The percentage of women in Foreign Services is therefore 26%.

(vi) The women who are in Foreign Service in Kenya serve at various levels. Thus two (2) women serve as ambassadors; five (5) women serve as consulars while three serve as first secretaries in the various embassies. The rest of the 86 women serve in various other posts including working as commercial attaches.

(vii) There are no instances where women,because of their sex, have been denied their opportunity to represent the country or to participate in the work of international organizations. Experts sent to international meetings usually include women from all areas of expertise. The proportion of women varies from delegation to delegation.

(viii) In Kenya, there are no programs that have been put in place to encourage women to enter the Foreign Services or to apply for positions in international bureaucracy. The posts that become vacant are usually advertised and the job would be granted on merit irrespective of the gender of the best candidate.

Table 5

Proportion of Women in the Diplomatic Services by Rank and Sex

RANK	1992			1994			OCTOBER 1998		
	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN
PS	33	2	6.1	30	2	6.7	30	4	13
Ambassadors	32	1	3.1	33	1	3.0	33	2	6
Deputy Secretary	89	7	8.2	84	9	10.7	82	13	15
Under Secretary	192	24	12.5	193	27	14.0	197	30	15
Senior Asst. Secretary	139	32	23.0	143	38	26.6	155	42	27
Asst. Secretary I	118	35	29.7	69	22	31.9	85	28	32
Asst. Secretary II	70	25	35.7	68	24	35.3	88	32	36

Asst. Secretary III	66	30	45.5	82	32	39.0	98	38	38
Total	**739**	**156**	**21.1**	**702**	**155**	**22.1**	**768**	**189**	**24**

Source: DPM Compliment Statistical Unit

ARTICLE 9

(i) The laws relating to citizenship and nationality are not yet in conformity with the convention as far as the national unity of the children is concerned. The father determines acquisition of citizenship by birth where the parents are legally married.

(ii) Further, section 90 of the constitution provided that a person born outside Kenya, shall become a citizen of Kenya at the date of his birth, if at that date his father is a citizen of Kenya. Section 91 further provides that a women who has been married to a citizen of Kenya shall be entitled to citizenship upon making an application in the prescribed form

Hence both provision are discriminatory against women in the sense that Kenyan men are able to bequeath citizenship on their spouses who are not nationals of Kenya as well as to their children born outside the country whereas the women cannot. However it is envisaged that these issues will be addressed adequately during the ongoing Constitutional Review Process.

In addition, children below seven (7) years cannot be issued with separate travel documents from those issued to their parents. Hence they have to travel on either of their parents passport. However, to travel on their mother's passports, they must obtain the father's consent and not vice versa.

Women who are single must obtain their fathers consent to obtain passports whereas those who are married must obtain their husband's consent.

ARTICLE 10

(i) The Government guarantees free basic education of every child in the Republic. This commitment has been apparent not only in its major policy pronouncements but also in practice. Career and vocational guidance is available equally to girls and boys. However with the introduction of Cost-Sharing in the education system, many girls from poor families are increasingly dropping out of school due to lack of funds. In certain critical situations little girls from poor homes have had to assist their mothers at home or becoming housemaids to earn a living.

(ii) In all schools, both girls and boys have access to the same curriculum, the same examination, teaching staff of the same standard although the quality of the school premises and equipment may differ from school to school. The determining factor here is the socio-economic conditions of the area where the school is situated, rather than sex.

(iii) The education sector has made tremendous progress as far as human resource development is concerned. Table 6 below shows that girls primary enrolment was 48.7% in 1990. This has slightly increased to 49.4% in 1998 bring the enrolment level of girls to be nearly the same as that of boys. However, more boys than girls continue to secondary and tertiary level inspite of the increase in enrolment at lower levels as shown in Table 7.

Table 6

Primary School Enrolment by Sex, 1990 - 1998

(000)

YEAR	GIRLS	BOYS	TOTAL	% GIRLS
1990	2626.0	2766.3	5392.3	48.7
1991	2659.0	2797.1	5456.1	48.7
1992	2723.4	2806.8	5530.2	49.2
1993	2667.5	2761.1	5428.6	49.2
1994	2742.0	2814.8	5556.8	49.3
1995	2734.1	2802.3	5536.4	49.4
1996	2754.3	2843.4	5597.7	49.2
1997	2797.1	2880.2	5677.3	49.3
1998	2925.2	2994.5	5919.7	49.4

Source: **Kenya Economic Surveys, 1990 - 1999**

Table 7 below shows enrolment in secondary schools by sex. Inspite of a notable percentage decrease in girls enrolment from primary to secondary, there has been a gradual increase in secondary enrolment from 42.8% in 1990 to 46.7% in 1998.

Table 7

Enrolment in Secondary Schools, 1990 - 1998

(Numbers)

YEAR	GIRLS	BOYS	TOTAL	% GIRLS
1990	264,766	353,695	618,461	42.8
1991	268,373	345,788	614,161	43.7
1992	275,690	353,372	629,062	43.8
1993	236,146	295,196	531,342	44.4
1994	283,400	336,439	619,839	45.7

1995	290,581	341,807	632,388	45.9
1996	305,327	352,926	658,253	46.4
1997	323,625	363,848	687,473	47.1
1998	327,098	373,440	700,538	46.7

Source: Kenya Economic Surveys, 1990 - 1999

(iv) In the year 1990/91 academic year, enrolment in the five public universities was recorded at 28.4% female with inconsistent enrolment levels between 1991/92 and 1995/96. However a gradual increase is noted from 1996/97 to 1998/99 standing at 30.5% as shown Table 8 below.

Table 8

Total Enrolment in Public Universities by Gender, 1990/91 - 1998/99

(Numbers)

YEAR	WOMEN	MEN	TOTAL	% WOMEN
1990/91	11,280	28,443	39,723	28.4
1991/92	9,411	32,263	41,674	22.6
1992/93	10,562	30,930	41,492	25.5
1993/94	10,323	29,248	39,571	26.1
1994/95	9,691	29,649	39,340	24.6
1995/96	11,127	28,938	40,065	27.8
1996/97	10,914	27,059	37,973	28.8
1997/98	12,729	30,862	43,591	29.2
1998/99	12,360	28,163	40,523	30.5

Source: Kenya Economic Surveys, 1993 - 1999

(v) In Kenya, the literacy rate for women is 67.4% compared to about 82.8% for men as per 1994 Welfare Monitoring Survey II. However female formed 73.9% of the

total enrolment in the adult literacy classes in 1998. Female enrolment in adult education has slightly increased by 1.2% from 73,215 in 1997 to 74,083 in 1998. However the total number of persons enrolled in the adult literacy classes has declined by 1.1% from 101,354 recorded in 1997 to 100,261 in 1998 as shown in table 9 below. It is also important to note that women are increasingly enrolling as students in the continued education programmes in the public and private universities in Kenya.

Table 9

Adult Education Enrolment by Sex, 1990 – 1998

YEAR	WOMEN	MEN	TOTAL	% WOMEN
1990	105,458	32,696	138,154	76.3
1991	104,867	34,709	139,576	75.1
1992	84,049	25,425	109,474	76.8
1993	81,271	26,027	107,298	75.7
1994	87,684	26,595	114,279	76.7
1995	88,479	27,572	116,051	76.2
1996	89,029	26,612	115,641	77.0
1997	73,215	28,139	101,354	72.0
1998	74,083	26,180	100,261	73.9

Source: Kenya Economic Surveys, 1990 – 1999

(vi) The Government recognizes that the promotion of women's education is a vital instrument in enhancing their social and economic status and that of their families and the nation at large. To this end, the Government has shown commitment in improving girls education by increasing the number of girls schools and education equipment and making continuous campaigns encouraging girls enrolment in science subjects and faculties. It is also a government policy that girls who have

dropped out of school due to pregnancy should be re-admitted back to school after delivery. However, girls education in Kenya has faced multiple barriers as a result of poverty, pregnancies, forces marriages and cultural and traditional practices.

(vii) Women and girls participate freely in sports and physical education at all levels of education.

ARTICLE 11

(i) The employment Act Chapter 226 Laws of Kenya, provides that every employee, male or female shall be entitled to leave with full pay, weekly rest days, adequate housing and medical attention. This is in addition to the normal requirements of the right to work, equal pay and benefits for equal work, right to promotion, training and job security and equal rights as far as social security rights are concerned.

(ii) The Government of Kenya has continued to take positive steps in the hiring of women and infact appointed some to very senior positions though the number is still small as shown in Table 10 below. The number of paid female employees has been gradually increasing from 21.9% in 1990 to 29.3% in 1998.

Table 10

Wage Employment in Modern Sector by Sex, 1990 - 1998

(000s)

YEAR	WOMEN	MEN	TOTAL	% WOMEN
1990	308.9	1100.5	1409.4	21.9
1991	338.0	1175.5	1513.8	22.3
1992	334.6	1127.0	1461.6	22.9

1993	341.0	1133.9	1474.9	23.1
1994	377.3	1128.2	1505.5	25.1
1995	407.8	1149.2	1557.0	26.2
1996	461.3	1157.5	1618.8	28.5
1997	473.4	1174.0	1647.4	28.7
1998	487.1	1177.8	1664.9	29.3

Source: Kenya Economic Surveys, 1993 - 1999

(iii) In civil service and indeed in the private sector, training is carried out in terms of the office not men or women.

(iv) Section 9 of the Employment Act provides that:

> "Every employer shall at all times at his own expense provide reasonable accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to his wages or salary as will enable such employee to obtain reasonable accommodation".

However in practice most house allowances paid are not sufficient to pay for reasonable accommodation as per current levels of inflation and house rents.

(v) The civil service code of regulations previously used to qualify this requirement and denied married women housing allowance except in a few specific instances. However the code of regulations has now been amended. Married women are now entitled to housing allowance equivalent to their male colleagues on the same cadre.

(vi) The National Hospital Insurance Fund (NHIF) is discriminatory in the sense that is does not allow a married women to be contributor except in the cases where she is the breadwinner of the family.

(vii) The Government recognizes the fact that employment of women in the formal sector requires a clear understanding of women's family and domestic roles. The government has therefore provided support services for working women by allowing paid maternity leave sixty (60) days in the civil service, housing allowance for women, maternal freedom and equal opportunities for pre-services and in-service training.

(viii) As yet the government has not taken any initiative towards the establishment of childcare facilities. However the need for these facilities has been recognized and private individuals have already established some in the urban areas where the demand is high.

(ix) The Salvation Army and the Child Welfare Society have established institutions in Nairobi to train young girls who drop out of school in childcare and housekeeping. Some of them are employed in the houses, thus supplementing the existing child care facilities.

(x) The jobs which by custom are predominantly performed by women includes, nursing, secretarial, housekeeping among others whereas, architecture, engineers, surveyors, drivers and watchmen are predominantly men. However the trends are much changing with the advent of the 8-4-4- system of education, and economic liberalization which led to the exposure for both men and women.

(xi) Both men and women in Kenya have a mandatory retirement age of 55 and can voluntarily retire at 40 years.

(xii) The social security legislation in Kenya includes the National Social Security Fund for private companies and non pension and pensionable group in the Civil Service. Permanent employees in the Civil Service benefit from the Civil Service Pension Scheme. Both the National Social Security Fund and the Civil Service Scheme legislation only benefit the employed women and men.

(xiii) Women's employment security is not affected by pregnancy. The law permits 60 days maternity leave for women with pay, but they forfeit their annual leave in the process. However, men are not entitled to any parental leave. Both men and women are entitled to 30 days annual leave, but no provisions are given for flexible working patterns as job sharing, unless for those who work under part time contracts with the employer.

(xiv) Safety laws apply to both men and women at work. The Kenyan Employment Act stipulates safety regulations at work and compensation schemes incase of any accident or injury at work place or in the process of work.

(xv) Women are restricted under the law to work in the mines or in the night except for nurses. Kenya does not have a network of child facilities except for those owned by private and international organizations. Children are thus taken care of by domestic workers when parents are at work. However in practice most employers allow mothers to break for breast feeding.

(xvi) The country has no specific provisions on addressing sexual harassment at work. However, the law punishes such acts when reported. Employers also have specific regulations addressing such issues.

ARTICLE 12

(i) Access to health care facilities is available to both women and men. The Government has accorded high priority to the provision and improvement of quality health services as a basic need. The emphasis has been on primary health care which include the following basic elements: promotion of food supply and proper nutrition, maternal and child health care including family planning, child immunization, prevention and control of endemic diseases, treatment of common diseases and injuries and the provision of essential drugs. However cost sharing

of health facilities makes it expensive for poor women to assess proper health services.

(ii) The average life expectancy in Kenya stands at 61.1, female 63.2 and 59.0 for male in 1993. However due to HIV/AIDS pandemic among other reasons there has been a decline showing the average life expectancy at 59.3, 60.9 female and 57.6 male in 1998.

(iii) The General Health status of the population has increased as the maternal mortality is now estimated at 590 per 100,000 live births. The total fertility rate rose remarkably from 6.8 in 1962 to 7.9 in 1979 before declining to 5.4 in 1993 and 4.7 in 1998 as shown in the Table 11 below.

(iv) The crude birth rate in Kenya shows a declining trend at 48 in 1989 to 34.6 in 1998 with crude death rate standing at 14 in 1979 and 11 in 1998. The contraception prevalence has been increasing from 26.9 in 1989 to 39.0 in 1998. It is also important to note that a number of traditional health workers exist in Kenya supplementing the skilled health personnel.

Table 11

National Basic Health Indicators

INDICATORS		1962	1969	1979	1989	1993	1998
Life Expectancy	Av.	46.3	49.1	55.5	59.5	61.1	59.3
At	F	49.8	51.2	56.9	61.4	63.2	60.9
Birth	M	42.7	46.9	54.1	57.6	59.0	57.6
Infant	Av.	126	119	104	74	62.6	70.7
Mortality	F	116	109	94	64	58.6	66.8
Rate	M	136	129	114	84	66.6	74.5
Under Five	Av.	211	167	150	105	93.2	105.2
Mortality	F	201	157	140	95	89.3	102.6

Rate M	221	177	160	115	97.1	107.8
Maternal Mortality Rate	226	204	168	225	365	590
Crude Birth Rate	50	50	52	48	44	34.6
Crude Death Rate	20	17	14	11	10	11
Total Fertility Rate	6.8	7.6	7.9	6.7	5.4	4.7
Contraceptive Prevalence Rate	4.8	7.0	17.0	26.9	32.7	39.0

Source: **KDHS, 1993, 1998**
Kenya Census, 1962, 1979 & 1989

(v) Table 12 below shows percentages of contraceptive use in Kenya by Province, Urban and Rural areas. The national contraceptive use in Kenya has been increasing from 26.9 in 1989 to 39.0 in 1998.

Table 12

Percentage of Married Women who are Currently Using Contraception by Province and Place of Residence

CATEGORY	ANY METHOD				MODERN METHOD			
	1984	1989	1993	1998	1984	1989	1993	1998
Province								
Nairobi	28.0	33.5	45.4	56.3	22.6	27.9	37.7	46.8
Central	34.3	39.6	56.1	61.1	20.9	30.9	49.8	54.8
Coast	10.3	18.1	20.3	22.1	6.6	14.8	16.7	20.0
Eastern	26.1	40.1	38.4	45.6	14.1	19.4	30.5	36.0
Nyanza	8.9	13.7	23.8	28.2	5.7	10.2	21.5	25.0
Rift Valley	15.0	29.7	27.9	37.7	5.5	18.1	21.0	26.4
Western	4.6	13.7	25.1	30.2	3.4	10.0	21.7	21.9
Residence								
Urban	24.4	30.5	43.3	49.6	18.8	25.5	37.9	41.0
Rural	16.0	26.2	30.9	36.2	8.4	16.5	25.5	29.0

National	17.1	26.9	32.8	39.0	9.8	17.9	27.3	31.5

Source: KDHS

(vi) Abortion is not legally accepted in Kenya expect in situations where the mother's life is in danger. There are no reliable statistics on reported cases on abortion.

(viii) Several intervention and campaign programmes have been launched by the government through Ministry of Health (National AIDs and STDs Control Programme), NGOs and religious organizations on HIV/AIDs awareness and control. The distribution of reported AIDs cases shows that the peak ages for AIDs cases are 30 - 34 for males and 25 - 29 for females as shown in the Table 13 below. Although the statistics shows that both men and women become infected in almost similar numbers, women become infected at younger ages than men reflecting the biological and social vulnerability of teenage women. Women are thus more burdened since they are known as the primary home care providers. It is on the realization of the magnitude of this pandemic in the country that the government established the national AIDS and STDs control programme. As a further intervention, the government also stated its policy in sessional paper No. 4 of 1997 which states that " Because of the magnitude of the AIDS epidemic and its impact on society, the government will continue to play its leadership role and will create an environment where AIDS related strategies shall be translated into action".

Table 13

Reported AIDs Cases by Age and Gender, 1986 - August 1999

AGE GROUP	FEMALE	MALE	TOTAL
0 - 4	2,532	3,243	5,775
5 - 9	278	348	626
10 - 14	147	115	262
15 - 19	2,209	631	2,840
20 - 24	7,320	3,078	10,398
25 - 29	8,974	7,010	15,984
30 - 34	6,559	8,341	14,900
35 - 39	3,561	5,815	9,376
40 - 44	1,802	4,135	5,937
45 - 49	1,014	2,506	3,520
50 - 54	479	1,341	1,820
55 - 59	193	602	794
60 +	199	563	762
Total	**35,267**	**37,727**	**72,994**

Source: NASCOP/MOH 1997

ARTICLE 13 (RESERVED BY GOK)

(i) Kenya has a system of family benefits, which are paid through the tax system. Tax relief is available to both male and female employees. Married women are also entitled to relief. Thus, a woman no longer loses her relief upon the change of status.

(ii) The National Hospital Insurance Fund Act provides that a married woman whose income forms part of her husband's taxable income does not qualify as a contributor. Other government subsidies such as owner occupied house allowance is now available to the married women as of right.

(iii) Both men and women are guaranteed the right to bank loans, mortgages and other forms of financial credit. In practice however, most women find it difficult to secure credit because they do not have the necessary collateral.

(iv) To alleviate this problem, the Kenya Women's Finance Trust was set up in 1981 to provide loans to women without the security demanded by the Financial Institutions. The Kenya Women's Finance Trust has continued to run an effective revolving fund and a loan guarantee scheme, which has assisted many small scale women either as individuals or as groups.

(v) Both men and women equally have the right to participate in recreational activities, sports and all aspects of cultural life.

ARTICLE 14

(i) Most rural women are not fully enlightened on their rights. There has been no national machinery specifically charged with ensuring exercise of women's rights. However currently, NGOs and religious organizations undertake such programmes under civic education.

(ii) Rural women are fully represented in the District Development Committees by a woman leader. This ensures that women are represented in the District Development Planning. The contribution of rural women is taken into account in developing economic and agricultural policies. Women also participate in District Women Development Committees, Community Based Nutrition

Programmes, benefit from women development grants and undergo entrepreneurship training under the programmes in the Ministry of Trade, Women's Bureau and Community Development Division of the Department of Social Services.

(iii) The government has continued to support women groups and their income generating activities. There has been a considerable growth of registered groups from 25,000 in 1988 in 1998 to 97,317 as shown in the Table B in the Annex.

(iv) The farming community in the rural areas is mainly composed of women who attend wide ranging courses at the farmers training centres in the Districts. More women are being trained as extension workers while the number of women working in the field including agricultural, veterinary and research officers has since increased.

(v) Accessibility to agricultural credit and loans to farmers has been made easier by the Government especially with the establishment of the Co-operative Bank of Kenya, which provides credit facilities thorough local co-operative societies to rural families. However the co-operative societies act stipulates that only plot holders qualify for the loan scheme. Therefore most women are disqualified despite the fact that they are the ones who manage the farms in the absence of the husbands.

(vi) However, in the recently tabled National Policy on Gender and Development, one of the proposed implementation strategies is the review of the existing land and inheritance laws with a view to guaranteeing women's rights as far as access to and control of agricultural resources are concerned.

(vii) The Agricultural Finance Corporation (AFC) also gives seasonal credit to farmers but again on the same principles as the co-operatives societies. However Kenya Women Finance Trust (KWFT) and Kenya Rural Enterprise (K-REP) provide

loans to women without the restrictions experienced in the other loaning institutions above. The two institutions however can not meet the demands of all women.

(viii) Women in the rural areas are mostly engaged in the farming sector, and their income generating activities is market oriented. Social Security Schemes such as the National Social Security fund (NSSF) and National Hospital Insurance Fund (NHIF) are schemes still solely for people in paid employment and hence rural women do not benefit from them.

ARTICLE 15

(i) All are equal before the law, both men and women have equal access to courts for legal redress.

(ii) However, there is one important exception in criminal law, the operations of which is discriminatory. Section 19 of the Penal Code provides a special defence to a wife charged with any offence except murder and treason if she shows that the offence was committed in the presence of her husband and under his coercion. The assumption here is that the coercion cannot operate vice versa.

(iii) The law of contract gives women capacity identical to that of men in entering and concluding contracts, as does the Law of succession in matters of administration of property.

(iv) The Law of domicile provides that at birth every person acquires the domicile of the father. Only if the person is born illegitimate does she/her acquire the domicile of the mother and that position changes if the mother marries the father of the child. Even an adopted child acquires the domicile of the husband. A married woman acquires the domicile of the husband. The law however, allows a

married woman to acquire an independent domicile of choice but this right is not extended to her children in marriage.

(v) It is important to mention here that the law of domicile touches the very essence of how the life of a women is harped up. For example, a wife, in practice, cannot include her children on her passport unless her husband gives express consent. Upon marriage, she is subjected to the customary and personal laws governing her husband thus questions regarding burial rites, i.e. are all governed by the customary laws of the man. One may, therefore, assume that since she acquires the domicile of the husband, then the personal law of the husband governs her.

The situation is however more complex than that as domicile concerns physical residence of a person and one may argue that the personal law of the husband should also with his place of permanent resident. On burial rites individuals and organizations have asked for a bill on burial rights and the law Reform Commission is still looking into it.

ARTICLE 16

(i) Generally women have the same right to enter into marriage as men. Kenya however, has various laws governing marriage and divorce, based on the different major religions recognized in the country. This is one area where the administration does not strictly follow the letter of the law. For example the Mohammedan marriage and divorce Act, allows the marriage of minors where a school age girl is forcible married under this Act, the administration interferes on the ground that the minor schooled complete her education first. Under the said law however, both parties must give consent to the marriage.

(ii) Should a woman elect to get married under African Customary Law, then she has expressly given consent to possible polygamous union. Divorce also depends on the form of marriage law the couple celebrated. As regards custody of children

both have equal rights and the courts decide the cases in accordance with the best interests of the children.

(iii) There are equal rights as provided for under the law regarding guardianship, wardship, trusteeship and adoption of the children.

(iv) The right to choose a family name is not legally provided for but the law does not interfere in this area.

(v) Women whether married or not, have a right to choose a profession and an occupation. A woman may acquire or dispose of her property freely, however in some instances especially where the property is owned jointly with the husband the consent of the husband may be required.

(vi) Marriage of children is forbidden and the administration takes all possible measure to prevent this occurring.

CONCULSION

Article 24 provides that state parties undertake to adopt all the necessary measures at the National level aimed at achieving the full realization of the rights recognized in the present convention.

In realization of the above requirement, the Government set up a Task Force to review all laws relating to women as well as the on going Constitutional Review Process as ways of realizing this objective. The Task Force was mandated not just to review the laws and regulations but also to consider practices, customs and policies that should be put in place in order to give full effect to the CEDAW Convention.

ANNEX

Table A

Population Aged 18 Years who voted by Province and Sex

PROVINCE	VOTED VOTERS 1992			VOTED VOTERS 1997		
	TOTAL	WOMEN	% WOMEN	TOTAL	WOMEN	% WOMEN
Nairobi	375,574	148,469	38.2	366,049	148,250	40.5
Central	1,034,016	541,824	52.4	997,890	524,869	53.6
Coast	312,993	154,932	49.5	375,253	184,999	49.3
Eastern	789,232	426,185	54.0	1,028,219	547,013	53.2
North Eastern	73,460	35,775	48.7	63,111	28,905	45.8
Nyanza	816,387	450,646	55.2	918,173	481,123	52.4
Rift Valley	1,467,503	729,349	49.7	1,643,354	818,390	49.8
Western	531,159	298,731	56.3	704,430	371,235	52.7
National	5,400,324	2,775,911	51.4	6,096,479	3,104,784	51.1

Source: Electoral Commission, 1992, 1997

Table B

Distribution of Registered Women Group in Kenya by Province Selected years 1963 –1998

PROVINCE	1963	1970	1975	1980	1991	1997	1998
Nairobi	8	10	18	65	568	1,882	2,486
Central	26	407	623	1,170	3,783	12,206	12,974
Coast	18	73	255	670	1,357	4,517	5,236
Eastern	80	115	305	685	5,077	18,755	20,465
N/Eastern	-	1	3	16	225	927	1,218

Nyanza	4	21	113	576	5,120	14,859	18,585
Rift Valley	28	55	140	847	4,568	20,544	22,567
Western	12	39	99	398	2,916	11,518	13,786
Total	171	721	1,556	4,422	23,614	85,205	97,317

Source: Women Group Census, 1991 Annual Reports (Several 1990 – 1998)